

**PETITION TO:**

**UNITED NATIONS**

**WORKING GROUP ON ARBITRARY DETENTION**

Chairperson-Rapporteur: Mr. Malick El Hadji Sow (Senegal)

Vice-Chairperson: Ms. Shaheen Sardar Ali (Pakistan)

Mr. Aslan Abashidze (Russian Federation)

Mr. Roberto Garretón (Chile)

Mr. Mads Andenas (Norway)

**HUMAN RIGHTS COUNCIL  
UNITED NATIONS GENERAL ASSEMBLY**

In the Matter of  
**Akzam Turgunov,**  
Citizen of Uzbekistan

v.

Government of Uzbekistan

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**URGENT ACTION REQUESTED**

Petition for Relief Pursuant to Resolutions 1997/50, 2000/36, 2003/31, and 6/4<sup>1</sup>

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<sup>1</sup> Resolutions 1997/50, 2000/36, and 2003/31 were adopted by the UN Commission on Human Rights extending the mandate of the Working Group on Arbitrary Detention. Resolution 6/4, also extending the mandate of the Working Group on Arbitrary Detention, was adopted by the Human Rights Council which, in accordance with UN General Assembly Resolution 60/251, has “assume[d] . . . all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights . . .” G.A. Res. 60/251, ¶ 6 (Mar. 15, 2006).

March 15, 2010

**BASIS FOR “URGENT ACTION” REQUEST**

As set forth in the attached Petition, the Uzbekistan government is arbitrarily depriving Akzam Turgunov of his liberty, and in so doing it is putting his health and life in grave danger. We request that Mr. Turgunov’s case be considered under the “urgent action” procedure. Further, we ask that communications be made immediately to the Government of Uzbekistan to ensure that Mr. Turgunov receives adequate food, clean water, and medical treatment and to protect Mr. Turgunov from any further torture or maltreatment.

Mr. Turgunov has been detained since his arrest on July 11, 2008, in three different detention centers: the Manget police station following his arrest; Jaslyk prison for an approximate period of one month following his trial, which concluded on October 23, 2008; and Karshi prison work camp where Mr. Turgunov has been held since being convicted of extortion (a pre-textual charge aimed to punish him for his years of political and human rights activism). In all three facilities, Mr. Turgunov has been subject to maltreatment and forced to live in life-threatening conditions, which has resulted in a serious deterioration of his health.

While being interrogated at Manget police station, boiling water was poured down his back while he attempted to write out a statement on his own behalf. The torture was reported to the prosecutor’s office by Mr. Turgunov’s lawyer, but no investigation was conducted until Mr. Turgunov took off his shirt in open court and bared burn marks covering most of his back and neck. Following a brief court-ordered inquiry where a medical exam concluded that the injuries were “minor,” the matter was closed. Despite the absence of an official court ruling, the officer accused was subsequently demoted. While being held in Jaslyk prison, a facility notorious for appalling conditions, Mr. Turgunov was repeatedly beaten by prison officials. Today, Mr. Turgunov is held at the Karshi work camp, which has been criticized especially for being overcrowded and having inadequate access to clean water. At the age of 57 and in feeble condition, Mr. Turgunov is forced to work 12 hours a day, seven days a week making bricks in a factory. As a result, he suffers from severe pain and weighs less than 40 kilograms (88 pounds).

Due to the appalling conditions and maltreatment Mr. Turgunov has faced, there is substantial reason to believe his health and life are in serious jeopardy. Accordingly, it is hereby requested that the Working Group consider this petition pursuant to the “Urgent Action” procedure.<sup>2</sup> In addition, it is also requested that the attached Petition be considered a formal request for an opinion of the Working Group pursuant to Resolution 1997/50 of the Commission on Human Rights as reconfirmed by Resolutions 2000/36, 2003/31, and Human Rights Council Resolution 6/4.

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<sup>2</sup> *Report of the Working Group on Arbitrary Detention*, E/CN.4/1998/44 (Dec. 19, 1997), Annex 1 at ¶¶ 22-24.

**QUESTIONNAIRE TO BE COMPLETED BY PERSONS ALLEGING ARBITRARY  
ARREST OR DETENTION**

**I. IDENTITY**

1. *Family name:* Turgunov
2. *First name:* Akzam
3. *Sex:* Male
4. *Birth date:* January 1, 1952
5. *Nationality:* Uzbekistan
6. (a) *Identity document (if any):* Passport  
  
(b) *Issued by:* Sabir Rakhimov GUV D , Uzbekistan  
  
(c) *On (date):*Not known  
  
(d) *No.:* Not known
7. *Profession and/or activity (if believed to be relevant to the arrest/detention):*  
Akzam Turgunov has been a human rights advocate since the mid-1990s. He is the Chairman of the Tashkent-based human rights group *Mazlum* (“The Oppressed”), which advocates on behalf of prisoners of conscience and protests the use of torture. He is the founder and director of the Tashkent section of the *Erk* (“Freedom”) political opposition party. Mr. Turgunov works as a lay public defender (non-lawyer advocate). At the time of his arrest by the Manget police, he was investigating police officers from Manget for corruption.
8. *Address of usual residence:* Sabir Rakhimov district of Kara-Khamis 2 \ 4 3-32, Tashkent, Uzbekistan

**II. ARREST**

1. *Date of arrest:* July 11, 2008.
2. *Place of arrest (as detailed as possible):*A teahouse in Manget, Karakalpakstan, Uzbekistan.
3. *Forces who carried out the arrest or are believed to have carried it out:*  
City of Manget police officers.
4. *Did they show a warrant or other decision by a public authority?* Not known.

5. *Authority who issued the warrant or decision:* N/A
6. *Relevant legislation applied (if known):* Article 165, part 3 of the Criminal Code of the Republic of Uzbekistan.

### **III. DETENTION**

1. *Date of detention:* July 11, 2008 (convicted and sentenced on October 23, 2008).
2. *Duration of detention (if not known, probable duration):* July 11, 2008 until present (approximately one year and eight months).
3. *Forces holding the detainee under custody:* Upon arrest, Manget police held Mr. Turgunov. He is currently detained in Karshi Prison Work Camp.
4. *Places of detention (indicate any transfer and present place of detention):* Initially, Mr. Turgunov was held at the Manget police department. At the end of 2008, he was transferred to Jaslyk prison, notorious for its harsh conditions, where he endured regular beatings. After approximately one month he was transferred to the prison camp in Karshi where he continues to serve his sentence.
5. *Authorities that ordered the detention:* Amudarinskii District Court, Manget, Karakalpakstan
6. *Reasons for the detention imputed by the authorities:* Mr. Turgunov was charged with extortion on July 11, 2008 and convicted of extortion on October 23, 2008.
7. *Relevant legislation applied (if known):* Article 165, part 3 of the Criminal Code of the Republic of Uzbekistan.

### **IV. DESCRIBE THE CIRCUMSTANCES OF THE ARREST AND/OR THE DETENTION AND INDICATE PRECISE REASONS WHY YOU CONSIDER THE ARREST OR DETENTION TO BE ARBITRARY**

#### **A. Statement of Facts**

This Statement of Facts details what is known about the circumstances surrounding the arrest and continuing detention of the Petitioner. Background on the current political climate in Uzbekistan is also included as it provides context that is relevant to this case.

#### **1. Background on Uzbekistan**

Uzbekistan obtained its independence from the Soviet Union in 1991 by referendum, and since that time the nation has been controlled by President Islam Karimov, chairman of the People's Democratic Party and former Communist Party leader.<sup>3</sup> The people of Uzbekistan do

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<sup>3</sup> Freedom House, *Nations in Transit Country Report: Uzbekistan (2009)*, available at <http://www.freedomhouse.org/uploads/nit/2009/Uzbekistan-WEB-full-report.pdf>.

not have a meaningful opportunity to change the composition of the government through the electoral process.<sup>4</sup> Only parties loyal to President Karimov are allowed to register and participate in elections. The genuine opposition groups—Birlik Popular Movement, Erk (“Freedom”) Democratic Movement, and Free Peasants Party—are excluded from the electoral process and instead operate as unregistered parties.<sup>5</sup> As a result, the international NGO Freedom House has given Uzbekistan a score of 7 (the worst possible) for “National Democratic Governance and Electoral Process” in its most recent assessment of democratic development.<sup>6</sup> In 2007, President Karimov was elected to a third term in office, in clear violation of the Constitution of the Republic of Uzbekistan (“Uzbek Constitution”), which prohibits any person from holding the office of President for more than two consecutive terms.<sup>7</sup>

Although the Uzbek Constitution provides for separation between the executive, legislative, and judicial branches of the national government, in practice, the control exercised by the executive over the other branches is nearly absolute.<sup>8</sup> The judiciary “exercise[s] little independence in practice,” and the General Prosecutor’s Office (which exercises criminal prosecutorial powers with respect to national Uzbek law) takes direction solely from the executive branch.<sup>9</sup>

Uzbekistan’s laws set forth important protections for citizens accused of criminal offenses, but these protections are frequently ignored by the General Prosecutor’s Office. Trials are generally open to the public; however, in some cases access has been restricted, without justification.<sup>10</sup> Due to the closure of international NGO offices in Uzbekistan, including Human Rights Watch, which was forced out of the country in July 2008<sup>11</sup>, fewer monitors have been permitted to observe sensitive trials.<sup>12</sup> Defendants in Uzbekistan are entitled to access to counsel from the time they are detained. However, the government often violates the right to an attorney during pretrial detention and either denies or delays such access.<sup>13</sup> In many cases, defendants are held *incommunicado* for long periods of time.<sup>14</sup> Almost all criminal cases brought by prosecutors result in guilty verdicts.<sup>15</sup>

The Committee Against Torture has expressed concern about Uzbekistan and the “[n]umerous, ongoing, and consistent allegations concerning routine use of torture and other

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<sup>4</sup> U.S. State Dep’t. Country Reports on Human Rights, *Uzbekistan (2008)*, February 25, 2009, available at <http://www.state.gov/g/drl/rls/hrrpt/2008/sca/119143.htm>.

<sup>5</sup> The government allowed the Erk Democratic Party to register for a brief period after the nation’s independence in 1991. Freedom House, *Nations in Transit Country Report supra* note 3.

<sup>6</sup> *Id.*

<sup>7</sup> A person “may not be elected to the office of the President of the Republic of Uzbekistan for more than two consecutive terms.” The Constitution of the Republic of Uzbekistan, Ch. 19, Art. 90, available at <http://www.umid.uz/Main/Uzbekistan/Constitution/constitution.html>.

<sup>8</sup> U.S. State Dep’t. Country Reports on Human Rights, *supra* note 4.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Human Rights Watch, *Uzbekistan: Human Rights Watch Representative Banned* (July 23, 2008), available at <http://www.hrw.org/en/news/2008/07/23/uzbekistan-human-rights-watch-representative-banned>.

<sup>12</sup> Freedom House, *Nations in Transit Country Report, supra* note 3.

<sup>13</sup> U.S. State Dep’t. County Reports on Human Rights, *supra* note 4.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

cruel, inhumane, or degrading treatment or punishment committed by law enforcement and investigative officials or with their instigation or consent, often to extract confessions or information to be used in criminal proceedings.”<sup>16</sup> Many defendants have reported that confessions were made under torture, threat, or coercion.<sup>17</sup> Human Rights Watch researchers have also found that authorities “beat, kick, and threaten detainees soon after they are first detained, when they are cut off from access to third parties . . . for the specific purpose of compelling them to sign a confession or other testimony.”<sup>18</sup> Despite an attempt at limited reforms in recent years,<sup>19</sup> courts continue to admit evidence obtained under coercion and torture.<sup>20</sup> Alleged torture methods include “suffocation, electric shock, deprivation of food and water, and sexual abuse in addition to beatings” and forced psychiatric treatment.<sup>21</sup> When complaints are lodged regarding the abuse, officials fail to “conduct prompt and impartial investigations.”<sup>22</sup> In the small number of torture cases prosecuted by the state, most defendants received mainly disciplinary sentences, and sentences for those prosecuted under the criminal code were “not commensurate with the gravity of the offense.”<sup>23</sup>

A consistent lack of oversight of the prisons is troubling because prison conditions are “poor and in some cases life threatening.”<sup>24</sup> Reports include “severe abuse, overcrowding, and shortages of food and medicine” in addition to harsh working conditions for prisoners, who are regularly assigned to manual labor details.<sup>25</sup> The International Committee of the Red Cross (ICRC) ceased prison visits in 2004 because the terms of access were not acceptable to the organization.<sup>26</sup> ICRC visits resumed in 2008 for a six-month trial period, and pursuant to an agreement with the government, prison visits have continued.<sup>27</sup>

### *Political Repression and Arbitrary Arrest*

According to international human rights groups and the United States Department of State, Uzbek authorities frequently arbitrarily arrest and detain individuals for expressing views

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<sup>16</sup> U. N. Comm. Against Torture, *Consideration of Reports Submitted by States Parties Under Article 19 of the Convention, Conclusions and Recommendations of the Committee against Torture: Uzbekistan*, ¶ 6(a), U. N. Doc. CAT/C/UZB/CO/3 (February 25, 2008).

<sup>17</sup> Freedom House, *Nations in Transit Country Report*, *supra* note 3.

<sup>18</sup> Human Rights Watch, *Nowhere to Turn: Torture and Ill-Treatment in Uzbekistan*, Vol 19, No. 6(D), at 1 (Nov. 2007) available at <http://www.hrw.org/sites/default/files/reports/uzbekistan1107webwcover.pdf>.

<sup>19</sup> In January 2008 the government abolished the death penalty and adopted *habeas corpus*. In recent years the government has addressed some of the problems with its statutory definition of torture, ordered prosecutors to apply the provisions of the Convention Against Torture, and moved the power of issuing arrest warrants from the prosecutors to the courts. The Supreme Court issued a directive prohibiting the introduction of evidence obtained under torture, and issued and distributed a pamphlet describing the rights of detainees. U. N. Comm. Against Torture, *supra* note 16, at ¶ 3(a)-(f).

<sup>20</sup> Human Rights Watch, *Nowhere to Turn: Torture and Ill-Treatment in Uzbekistan*, *supra* note 18, at 44.

<sup>21</sup> U.S. State Dep’t. Country Reports on Human Rights, *supra* note 4.

<sup>22</sup> *Id* at ¶ 6(c).

<sup>23</sup> U. N. Comm. Against Torture, *supra* note 16, at ¶ 10.

<sup>24</sup> U.S. State Dep’t. Country Reports on Human Rights, *supra* note 4.

<sup>25</sup> U. N. Comm. Against Torture, *supra* note 16, at ¶ 10.

<sup>26</sup> *Id* at ¶ 13.

<sup>27</sup> Fergana.Ru, *Uzbekistan: The Observers of ICRC Visited Famous Prison in Andijan*, September 11, 2009, available at <http://enews.ferghana.ru/news.php?id=1454&mode=snews>; *see also* The ICRC in Uzbekistan at <http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/uzbekistan?opendocument>.

critical of the government.<sup>28</sup> For example, individuals who have spoken out against the government about what is known as the “Andijan Massacre”<sup>29</sup> have been detained and subjected to extremely harsh treatment. Following the Andijan Massacre, the government ejected foreign journalists and imprisoned human rights activists, independent journalists, and political activists who openly condemned the government’s response to its citizens’ attempt to assemble.<sup>30</sup> They were arrested, tortured, and reportedly forced to sign confessions and provide the names of participants in the demonstration.<sup>31</sup>

Activists in Uzbekistan are generally subjected to politically-motivated prosecutions, sham trials, and long prison sentences as a result of their work.<sup>32</sup> There have been reports that police use false charges of extortion or tax evasion to prevent people from exposing corruption or local criminal activities.<sup>33</sup> Human Rights Watch confirms that in recent years, the government and local authorities have pursued a pattern of falsely charging political activists and dissidents with crimes such as a means of concealing a political motive to deny them their freedom.<sup>34</sup> Holly Cartner, the Europe and Central Asia director at Human Rights Watch stated in 2006 “the Uzbek government often charges journalists and activists with extortion or hooliganism to punish or silence them. . . We have witnessed this pattern of harassment and persecution for many months now”.<sup>35</sup> In particular, police have harassed and arbitrarily detained members of the independent Birlik, Free Farmers, Erk (Mr. Turgunov’s party), and Birdamilk parties.<sup>36</sup> Notably, in 2006 a court sentenced Sanjar Umarov, co-founder of the opposition political movement “Sunshine Coalition,” to 10 years’ imprisonment on “politically motivated charges of tax evasion and illegal commodities trading.”<sup>37</sup>

In addition to members of the political opposition, there is a pattern of politically-motivated charges against human-rights defenders in Uzbekistan.<sup>38</sup> For example, in 2006 Rasul

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<sup>28</sup> Human Rights Watch, *Saving its Secrets: Government Repression in Andijan* (May 2008) available at <http://www.hrw.org/reports/2008/uzbekistan0508/uzbekistan0508web.pdf>; U.S. State Dep’t. Country Reports on Human Rights, *supra* note 4.

<sup>29</sup> The Andijan Massacre occurred on the morning of May 13, 2005, when thousands of citizens in the town of Andijan organized in Babur Square to speak out about social and economic problems. Uzbek security forces began firing into the crowds at 6:00 a.m. with no warning and continued throughout the day, even while demonstrators were trying to flee the area. Between three and five hundred men, women, and children were killed in the shooting. Org. for Security and Co-operation in Eur., Office of Democratic Institutions & Human Rights, *Preliminary Findings on the Events in Andijan, Uzbekistan, 13 May 2005*, 15 (June 20, 2005) [hereinafter ODIHR].U.N. Econ. & Soc. Council (“ECOSOC”), Comm’n on Human Rights, *Report of the Mission to Kyrgyzstan by the Office of the United Nations High Commissioner for Human Rights (OHCHR) Concerning the Events in Andijan, Uzbekistan, 13-14 May 2005*, ¶ 20, U.N. Doc. E/CN.4/2006/119 (Feb. 1, 2006).

<sup>30</sup> Human Rights Watch, *Saving its Secrets: Government Repression in Andijan* (May 2008) available at <http://www.hrw.org/reports/2008/uzbekistan0508/uzbekistan0508web.pdf>.

<sup>31</sup> *Id.* at 2.

<sup>32</sup> Human Rights Watch, *World Report 2009 – Uzbekistan* (January 14, 2009), available at <http://www.unhcr.org/refworld/docid/49705f88c.html>.

<sup>33</sup> U.S. State Dep’t. Country Reports on Human Rights, *supra* note 4.

<sup>34</sup> Telephone Interview with Igor Vorontsov, Researcher on Human Rights, Human Rights Watch, March 26, 2009.

<sup>35</sup> Human Rights Watch, *Uzbekistan: Journalist Imprisoned in Widening Crackdown* (October 5, 2006), available at <http://www.hrw.org/en/news/2006/10/05/uzbekistan-journalist-imprisoned-widening-crackdown>

<sup>36</sup> U.S. State Dep’t. Country Reports on Human Rights, *supra* note 4.

<sup>37</sup> *Id.*

<sup>38</sup> Amnesty International estimates that “[a]t least ten human rights defenders remain in prison in cruel, inhumane, and degrading conditions, having been sentenced to long prison terms after convictions in unfair trials.” Amnesty

Khudainasrov, head of the Anren branch of the independent human rights organization Ezgulik, was sentenced to more than nine years' imprisonment on charges of extortion, swindling, abuse of power and falsification of documents.<sup>39</sup> He complained to his lawyer that he was beaten following his trial and claims to have been placed in a punishment cell following his sentencing in retaliation for failing to confess during the trial.<sup>40</sup> Even some family members of human-rights defenders have reported being detained and threatened, in an attempt to place pressure on the activists.<sup>41</sup> For example, authorities jailed poet Yusuf Jumaev's two sons, Mashrab Jumaev and Bobur Jumaev, on what Human Rights Watch has called "trumped up charges" in apparent retaliation for their father's activism.<sup>42</sup> Erkin Musaev, whose detention was declared arbitrary by the Working Group on Arbitrary Detention, was reportedly threatened with reprisals to himself and his family in response to an urgent action request transmitted to the Government of Uzbekistan.<sup>43</sup> Human Rights Watch has been banned from Uzbekistan since July 2008.<sup>44</sup>

## 2. Background on Akzam Turgunov

Akzam Turgunov has been a leading figure in the human rights and opposition movements in Uzbekistan more than fifteen years. He is the founder and Chairman of the Tashkent-based human rights group *Mazlum* ("The Oppressed"), which advocates on behalf of prisoners of conscience and protests the use of torture.<sup>45</sup> Mr. Turgunov also is the director of the Tashkent section of the *Erk* ("Freedom") political opposition party.<sup>46</sup> Except for a brief period following Uzbekistan's break from the Soviet Union, the government has refused registration to this genuine opposition party, effectively excluding its candidates from the political process.<sup>47</sup>

Inspired by the Polish "Solidarity" movement and the work of Soviet dissident Andrei Sakharov, Mr. Turgunov began working as a lay public defender (a private non-lawyer advocate) and as a human rights advocate in 1994.<sup>48</sup> In 1998, Uzbek authorities charged Mr. Turgunov with "abuse of office" and "official negligence" and sentenced him to six years in prison. The prosecution, described by Human Rights Watch as "politically motivated," stemmed from his

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International, *Uzbekistan: Submission to the Human Rights Committee, 16-31 July 2009: Pre-Sessional Meeting of the Country Report Task Force on Uzbekistan* (April 28, 2009), available at <http://www.amnesty.org/en/library/asset/EUR62/002/2009/en/6bde1bfe-be09-47b0-bced-3f234ae8960b/eur620022009en.html>.

<sup>39</sup> Human Rights Watch, *Human Rights Watch Concerns on Uzbekistan* (June 8, 2009), available at <http://www.hrw.org/en/news/2009/06/08/human-rights-watch-concerns-uzbekistan-0?print>

<sup>40</sup> *Id.*

<sup>41</sup> Abdujalil Boymatov & Mary Lawlor, *Imprisoned Human Rights Defenders in Uzbekistan* (December 12, 2008), available at <http://www.frontlinedefenders.org/files/en/Letter%20to%20Margaret%20Sekagya.pdf>.

<sup>42</sup> Human Rights Watch, *Human Rights Watch Concerns on Uzbekistan*, *supra* note 39.

<sup>43</sup> Human Rights Council, United Nations, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development: Report of the Working Group on Arbitrary Detention: Report of The Working Group on Arbitrary Detention*, A/HRC/13/30, at ¶29 (January 15, 2010).

<sup>44</sup> Human Rights Watch, *Uzbek Activist Sentenced to 10 Years: EU Wrong to Cite 'Progress' in Human Rights* (October 23, 2008) available at <http://www.hrw.org/ru/news/2008/10/28/uzbekistan-activist-sentenced-10-years>.

<sup>45</sup> Radio Free Europe/ Radio Liberty, *Prominent Uzbek Rights Activist Gets Lengthy Prison Sentence* (October 24, 2008), UNHCR Refworld, available at <http://www.unhcr.org/refworld/docid/49058eec1a.html>.

<sup>46</sup> Boymatov & Lawlor, *supra* note 41.

<sup>47</sup> Freedom House, *Nations in Transit Country Report*, *supra* note 3.

<sup>48</sup> Radio Free Europe/ Radio Liberty, *supra* note 45.

work with a neighborhood committee to establish private-sector alternatives to state-provided services. Mr. Turgunov was given amnesty and released in May 2000.<sup>49</sup> Despite his release, authorities denied him an exit visa, and some of his family members were reportedly subjected to intimidation and harassment.<sup>50</sup>

Prior to his most recent arrest, described below, Mr. Turgunov was working full-time as a human rights public defender in the semi-autonomous region of Karakalpakstan.<sup>51</sup> During this time, Human Rights Watch observed and documented a negative government reaction to Turgunov's work.<sup>52</sup> His grant-funded work as a lay (non-lawyer) public defender in the region focused on investigating corruption by local officials, including a case involving police in the town of Manget.<sup>53</sup>

### 3. Circumstances of Mr. Turgunov's Arrest

Police in Manget, Karakalpakstan, arrested Mr. Turgunov on charges of extortion on July 11, 2008, under circumstances that appear to have been orchestrated to frame him.<sup>54</sup> Prior to his arrest, Turgunov was assisting Muborak Salayeva as a lay public defender in a dispute with her ex-husband, Aybek Hujoboyev,<sup>55</sup> a wealthy landowner with strong ties to the local government.<sup>56</sup> Ms. Salayeva was seeking to enforce a court settlement whereby Mr. Hujoboyev was ordered to provide her and their children with accommodation. She had been unable to enforce the settlement.<sup>57</sup> After some time, Ms. Salayeva's brother, Hamza Salayev, contacted Mr. Hujoboyev, requesting that he comply with the court order and provide for his ex-wife.<sup>58</sup> Despite an expressed desire to honor his obligations, Mr. Hujoboyev said he was unable to do so at the time. This informal interaction between the men was friendly and consistent with local tradition.<sup>59</sup>

Suffering from financial hardship since her divorce, Ms. Salayeva contacted Mr. Turgunov, who was known in the region for his ability to negotiate settlements in similar circumstances.<sup>60</sup> On July 11, 2008, Mr. Turgunov went to a teahouse with and at the request of Mr. Salayev to meet with Mr. Hujoboyev. Before the meeting, Mr. Turgunov had no direct contact with Mr. Hujoboyev. During the meeting, Mr. Hujoboyev handed Mr. Turgunov a plastic bag without explanation.<sup>61</sup> Without opening the bag, Mr. Turgunov handed it to Mr. Salayev,

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<sup>49</sup> Human Rights Watch, *List of Imprisoned Human Rights Defenders and Activists* (December 11, 2008) available at <http://www.hrw.org/en/news/2008/12/10/list-imprisoned-uzbek-defenders-and-activists>.

<sup>50</sup> Radio Free Europe/ Radio Liberty, *supra* note 45.

<sup>51</sup> Telephone Interview with Igor Vorontsov, Researcher on Human Rights, Human Rights Watch (March 26, 2009).

<sup>52</sup> Telephone Interview with Igor Vorontsov, Researcher on Human Rights, Human Rights Watch (March 26, 2009).

<sup>53</sup> Telephone Interview with Igor Vorontsov, Researcher on Human Rights, Human Rights Watch (March 26, 2009).

<sup>54</sup> Human Rights Watch, *Uzbek Activist Sentenced to 10 Years*, *supra* note 44.

<sup>55</sup> *Id.*

<sup>56</sup> Telephone Interview with Igor Vorontsov, Researcher on Human Rights, Human Rights Watch (March 26, 2009).

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> Human Rights Watch, *Uzbek Activist Sentenced to 10 Years*, *supra* note 44.

who opened it and discovered 500,000 Uzbek Soums (worth approximately U.S. \$330).<sup>62</sup> Mr. Salayev immediately handed the bag back to Mr. Hujoboyev indicating that the sum was insufficient to satisfy the judgment for accommodation.<sup>63</sup> Mr. Hujaboyev then left the teahouse and the police entered, arresting both Mr. Turgunov and Mr. Salayev.<sup>64</sup> Mr. Turgunov was charged with extortion. When the police arrested Mr. Turgunov, he was holding a different plastic bag. Initially believing it to be incriminating, the police found that it contained only bones that Mr. Turgunov had been saving for his dog.<sup>65</sup> The entire exchange was secretly video and audio recorded by the police.<sup>66</sup>

Authorities searched Mr. Turgunov's residences in Karakalpakstan and Tashkent. During the search of his residence in Tashkent, authorities seized a book authored by Mohammed Salih, the political opposition leader of the Erk Party, and a video about an assassination attempt on Mr. Salih.<sup>67</sup> At the request of Human Rights Watch, which had been recently forced out of the country, an official from the Czech Embassy was present during the search. No items were removed from Mr. Turgunov's temporary Karakalpakstan residence, and none of the items seized were entered as evidence in the subsequent trial.

Following his arrest in Karakalpakstan on July 11, 2008, authorities held Mr. Turgunov *incommunicado* for 18 days.<sup>68</sup> Mr. Turgunov reported that on July 13 he was given the opportunity to question his accuser, Mr. Hujoboyev.<sup>69</sup> During this proceeding, Mr. Hujoboyev recanted his allegations. He admitted that Mr. Turgunov had never tried to extort money from him and that the three men had met only to discuss the terms of the divorce settlement in which Mr. Turgunov had been engaged to negotiate on behalf of Mr. Hujoboyev's ex-wife.<sup>70</sup> The next day on July 14, while Mr. Turgunov was attempting to write a statement in his cell, someone approached him from behind and poured boiling water on him,<sup>71</sup> causing severe burns and loss of consciousness.<sup>72</sup> It is believed that at the time of the burning, Mr. Turgunov may have been writing a letter to the prosecutor requesting to be released in light of Mr. Hujoboyev's recantation the day before.<sup>73</sup> According to Mr. Turgunov, the only other person who had been in the cell was investigator Salomat Ibragimov, a local lieutenant.<sup>74</sup> The lieutenant was interrogating Mr. Turgunov about the alleged extortion and had been attempting to elicit a confession from him.<sup>75</sup>

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<sup>62</sup> UzNews, *Trial of Human Rights Activist Starts in Karakalpakstan* (August 26, 2008), available at <http://www.cascfen.net/?p=176>.

<sup>63</sup> *Id.*

<sup>64</sup> Telephone Interview with Igor Vorontsov, Researcher on Human Rights, Human Rights Watch (March 26, 2009).

<sup>65</sup> Uznews, *supra* note 62.

<sup>66</sup> Telephone Interview with Dilirom Is'havoka, leader of the Birdamilk opposition movement (February 22, 2009).

<sup>67</sup> Institute for War and Peace Reporting, *Criminal Charges Used to Smear Uzbek Regime Critics* (July 24, 2008), available at <http://www.groundreport.com/Business/Criminal-Charges-Used-to-Smear-Uzbek-Regime-Critic>. [hereinafter IWPR].

<sup>68</sup> Telephone Interview with Igor Vorontsov, Researcher on Human Rights, Human Rights Watch (March 26, 2009).

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> Human Rights Watch, *Uzbek Activist Sentenced to 10 Years*, *supra* note 44.

<sup>73</sup> Telephone Interview with Igor Vorontsov, Researcher on Human Rights, Human Rights Watch (March 26, 2009).

<sup>74</sup> *Id.*

<sup>75</sup> Telephone Interview with Rustam Tulyaganov, Akzam Turgunov's Uzbek attorney (August 15, 2009).

#### 4. Trial and Sentencing of Mr. Turgunov

Authorities charged Mr. Turgunov with extorting 20 million Soums (approximately US\$15,000) from Mr. Hujoboyev,<sup>76</sup> under Article 165, part 3 of the Uzbek Criminal Code<sup>77</sup> in the Amudarinskii District Court, Karakalpakstan.<sup>78</sup> Before the trial began, a number of activists sought access to the courthouse to observe the trial.<sup>79</sup> In response, a court secretary, who was also the niece of the judge, stated, “[a]nyone can come in, all the press, bring everyone; Akzam will never be free, he will never get out of prison.”<sup>80</sup> Nevertheless, access was denied.

During the trial, the court permitted Mr. Turgunov to present his case and to call witnesses. The defense called a number of former clients, who testified to Mr. Turgunov’s character.<sup>81</sup> The court significantly limited Mr. Turgunov’s ability to refute the allegations made against him. Prosecutors obtained the testimony of Mr. Hujoboyev at a closed examination prior to the trial and simply presented it in written form to the court.<sup>82</sup> Rustam Tulyaganov, Mr. Turgunov’s attorney, was not permitted to be present at Mr. Hujoboyev’s examination. Therefore, Mr. Turgunov was denied the opportunity to cross examine Mr. Hujoboyev during trial and, more importantly, was unable to introduce as evidence the fact that Mr. Hujoboyev had recanted his allegation against him.

The court convicted Mr. Turgunov on charges of extortion and sentenced him to 10 years’ imprisonment on October 23, 2008.<sup>83</sup> Following an appeal to the Supreme Court of Karakalpakstan on December 11, 2008, the conviction was upheld. The hearing lasted only 15

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<sup>76</sup> Telephone Interview with Igor Vorontsov, Researcher on Human Rights, Human Rights Watch (March 26, 2009).

<sup>77</sup> Article 165 of the Criminal Code of the Republic of Uzbekistan provides that: “Extortion, that is demand to transfer someone’s property or the right to someone’s property, or to provide property preferences, or to commit actions related to property under the threat of application of violence over a victim or his immediate persons, or of damage or destruction of property, or of disclosure of information which the victim and the said persons want to keep undisclosed, or by making the situation that compels the victim to transfer his property or the right thereto – shall be punished with imprisonment from three to five years.

Extortion committed:

- a) repeatedly or by a dangerous recidivist;
- b) in large amount;
- c) by previous concert or by a group of individuals –

shall be punished with imprisonment from five to ten years.

Extortion committed:

- a) in especially large amount;
- b) by a special dangerous recidivist;
- c) by an organized group or in its interests –

shall be punished with imprisonment from ten to fifteen years.” *Criminal Code of the Republic of Uzbekistan*, 2012-XII, September 22, 1994, available at: <http://www.unhcr.org/refworld/docid/3ae6b59216.html>.

<sup>78</sup> Uznews, *supra* note 62.

<sup>79</sup> Telephone Interview with Igor Vorontsov, Researcher on Human Rights, Human Rights Watch (March 26, 2009).

<sup>80</sup> Telephone Interview with Dilirom Is’havoka, leader of the Birdamilk opposition movement (February 22, 2009).

<sup>81</sup> Telephone Interview with Igor Vorontsov, Researcher on Human Rights, Human Rights Watch (March 26, 2009).

<sup>82</sup> *Id.*

<sup>83</sup> U.S. State Dep’t. Country Reports on Human Rights, *supra* note 4.

minutes and Mr. Turgunov's lawyer was not permitted to present before the court.<sup>84</sup> A few months later, Mr. Turgunov's lawyer, Rustam Tulyaganov, had his license to practice law revoked as part of the government's re-licensing procedure.<sup>85</sup>

##### 5. The Torture and Maltreatment of Mr. Turgunov

While Mr. Turgunov was being interrogated, someone poured boiling water on him.<sup>86</sup> This abuse resulted in severe burns and loss of consciousness. The Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment (CAT), to which Uzbekistan acceded on October 28, 1995,<sup>87</sup> defines torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession . . . when such pain or suffering is inflicted by or at the instigation of . . . a public official or a person acting in an official capacity."<sup>88</sup> Mr. Turgunov's treatment during the interrogation constituted torture under the CAT.<sup>89</sup>

The U.S. Department of State has called the allegations by Mr. Turgunov "credible,"<sup>90</sup> and the European Union called on Uzbekistan to "investigate thoroughly" the allegations of mistreatment.<sup>91</sup> Moreover, torture and abuse of detainees by law enforcement officials in order to obtain a confession is "routine" in Uzbekistan,<sup>92</sup> despite the fact that the Uzbek Constitution provides that "[n]o one shall be subject to torture, violence or any other cruel or humiliating treatment."<sup>93</sup>

The Uzbekistan government failed to respond to Mr. Turgunov's allegations of torture within a reasonable time, and thereafter failed to punish adequately those responsible when action was finally taken. On July 22, 2008, Mr. Turgunov's attorney requested an investigation by the General Prosecutor's Office into Mr. Turgunov's allegations of mistreatment but received

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<sup>84</sup> Ferghana.ru News Agency, *Uzbekistan: The Karakalpak Court Refused to Mitigate Agzam Turgunov's Punishment* (December 12, 2008), available at <http://enews.ferghana.ru/news.php?id=892&print=1>; U.S. State Dep't. Country Reports on Human Rights, *supra* note 4.

<sup>85</sup> Human Rights Watch, *Human Rights Watch Concerns on Uzbekistan*, June 8, 2009, available at <http://www.reliefweb.int/rw/rwb.nsf/db900SID/MUMA-7SU2YJ?OpenDocument>

<sup>86</sup> The Body of Principles defines a detained person as "any person deprived of personal liberty except as a result of conviction for an offense," and "imprisoned person" as "any person deprived of personal liberty as a result of a conviction." Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment, G.A. Res. 43/173, Principle 2, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988) [hereinafter Body of Principles]. As such, the protection of the Principles applies to pretrial, trial, and post trial detention.

<sup>87</sup> Office of the United Nations High Commissioner for Human Rights, *Status of Ratification of the Principle International Human Rights Treaties as of 14 July 2006*, available at <http://www2.ohchr.org/english/bodies/docs/status.pdf>.

<sup>88</sup> Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, 1465 U.N.T.S. 85, *entered into force* June 26, 1987, at Art. 2(1) [hereinafter CAT].

<sup>89</sup> The Body of Principles provides that "'cruel, inhuman, or degrading treatment or punishment' should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental..." Body of Principles, *supra* note 99, at Principle 6.

<sup>90</sup> U.S. State Dep't. Country Reports on Human Rights, *supra* note 4.

<sup>91</sup> Council of the European Union, *Declaration on Behalf of the European Union Concerning Individual Uzbek Cases*, 17380/1/08 REV1 (Presse 377) (December 17, 2008).

<sup>92</sup> U.S. State Dep't. Country Reports on Human Rights, *supra* note 4.

<sup>93</sup> The Constitution of the Republic of Uzbekistan, *supra* note 7, at Art. 26.

no response.<sup>94</sup> During a court proceeding on September 16, 2008, Mr. Turgunov removed his shirt and displayed the burn marks he suffered from the boiling water “which covered a large portion of his back and neck.”<sup>95</sup> The court thereafter suspended the trial and ordered an investigation into the incident.<sup>96</sup> A forensic examination took place on September 22, 2009 which confirmed the injury. However, the court found that Mr. Turgunov had not been tortured by authorities, apparently accepting denials by the alleged perpetrator as fact.<sup>97</sup>

Despite this finding by the court, it is reported that the perpetrator, Mr. Turgunov’s interrogator, was reprimanded and demoted for failure to comply with the Ministry of Internal Affairs’ (MOI) regulations on “protecting and escorting suspects.”<sup>98</sup> This punishment, though unofficial as it was, is consistent with the concern expressed by the Committee Against Torture, that in the small number of mistreatment allegations pursued by Uzbekistan, the offenders have “received mainly disciplinary penalties.”<sup>99</sup> Similarly, in this case, Investigator Ibragimov received only an administrative punishment and this reprimand came only from within the police department.

In addition to the torture inflicted on Mr. Turgunov, he has been subject to maltreatment while imprisoned. For approximately one month during his appeal, Mr. Turgunov was held at Jaslyk prison; a prison notorious for its harsh conditions, where he endured regular beatings. Following his conviction, Mr. Turgunov was transferred to the prison work camp in Karshi, where he is currently imprisoned, near the administrative center of Kashinskoy.<sup>100</sup> The prison is extremely overcrowded and there is insufficient access to water.<sup>101</sup> Mr. Turgunov is forced to work 12 hours a day, seven days a week, in a factory making bricks.<sup>102</sup> As a result, the now-57-year-old Mr. Turgunov weighs only 40 kilograms (88 pounds).<sup>103</sup>

## V. Legal Analysis

The detention of Mr. Turgunov on what Human Rights Watch has called “politically motivated charges” constitutes an arbitrary detention of liberty<sup>104</sup> falling within Category II and

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<sup>94</sup> Human Rights Watch, *List of Imprisoned Human Rights Defenders and Activists*, *supra* note 49.

<sup>95</sup> *Id.*

<sup>96</sup> Human Rights Watch, *Uzbek Activist Sentenced to 10 Years*, *supra* note 44.

<sup>97</sup> U.S. State Dep’t. Country Reports on Human Rights, *supra* note 4.

<sup>98</sup> *Id.*

<sup>99</sup> U. N. Comm. Against Torture, *supra* note 16, at ¶ 10.

<sup>100</sup> Telephone Interview with Dilirom Is’havoka, leader of the Birdamilk opposition movement (February 22, 2009).

<sup>101</sup> Telephone Interview with Murod Turgunov, Akzam Turgunov’s son (July 21, 2009).

<sup>102</sup> Telephone Interview with Dilirom Is’havoka, leader of the Birdamilk opposition movement (February 22, 2009).

<sup>103</sup> Telephone Interview with Murod Turgunov, Akzam Turgunov’s son (July 21, 2009).

<sup>104</sup> Human Rights Watch, *Uzbek Activist Sentenced to 10 Years*, *supra* note 44; an arbitrary deprivation of liberty is defined as any “depriv[ation] of liberty except on such grounds and in accordance with such procedures as are established by law.” International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16), at 52 U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* 23 March 1976, at art. 9(1) [hereinafter ICCPR]. Such a deprivation of liberty is specifically prohibited by international law. *Id.* “No one shall be subjected to arbitrary arrest, detention or exile.” Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810, at art 9 (1948) [hereinafter UDHR]. “Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law...” Body of Principles, Principle 2, *supra* note 86 at 298.

Category III of the classifications of cases as defined by the Working Group.<sup>105</sup> Article 9 of the Universal Declaration of Human Rights (UDHR) and Article 9(1) of the International Covenant on Civil and Political Rights (ICCPR) specifically prohibit arbitrary detention.<sup>106</sup> Mr. Turgunov's detention is therefore a violation of international human rights law.

This case meets the requirements of Category II because Mr. Turgunov's detention was a result of his exercise of his fundamental right to freedom of association embodied in Article 20(1) of the UDHR and Article 22 of the ICCPR, to which Uzbekistan acceded on September 28, 1995.<sup>107</sup> Further, Mr. Turgunov's detention falls under Category II because it is the result of the exercise of his fundamental right to participate in government as protected by Article 21(1) of the UDHR and Article 25(a) of the ICCPR.

This case also meets the requirements of Category III because Uzbekistan failed to observe the minimum international standards of a fair trial. It violated protections embodied in Articles 3, 5, 7, and 10 of the UDHR, Articles 7, 10, and 14 of the ICCPR, and Articles 6, 7, 17, 18, 19, 21, 33, and 36 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles) by torturing Mr. Turgunov during pre-trial detention, denying him access to an attorney, failing to grant him a trial by an impartial tribunal, and denying him the right to examine the witnesses against him.

#### 1. The Extortion Charges Against Mr. Turgunov are False and Politically-Motivated

The extortion charge against Mr. Turgunov by Manget police was fabricated and was brought as a pre-textual means to punish and silence him for his political and public activism. The circumstances surrounding Mr. Turgunov's arrest and detention are consistent with the Uzbekistan government's documented pattern and practice of silencing political activists by falsely charging them with crimes such as extortion. Human Rights Watch, Amnesty International, and the U.S. Department of State have all reported that the Uzbek police routinely arrest human rights defenders under the guise of extortion, tax evasion, and other "trumped up

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<sup>105</sup> A Category II deprivation of liberty occurs, "[w]hen the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20, and 21 of the [UDHR] and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26, and 27 of the [ICCPR]." Office of the High Comm'r for Human Rights, United Nations, Fact Sheet No. 26: The Working Group on Arbitrary Detention, pt. IV(B) [hereinafter Fact Sheet No. 26]. A Category III deprivation of liberty occurs, "[w]hen the total or partial non-observance of the international norms relating to the right to a fair trial, spelled out in the [UDHR] and in the relevant instrumental instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character." *Id.* Additionally, in making a Category III determination, the Working Group will look to the Principles for the Protection of All Persons under any Form of Detention or Imprisonment, and if the State is a party to the ICCPR, articles 9 and 14 of the ICCPR. *Id.*

<sup>106</sup> UDHR *supra* note 104, at Art 9. ICCPR *supra* note 104, at Art 9(1).

<sup>107</sup> Office of the United Nations High Commissioner for Human Rights, *Status of Ratification of the Principle International Human Rights Treaties, as of 14 July 2006*, available at <http://www2.ohchr.org/english/bodies/docs/status.pdf>. While the UDHR, as a General Assembly resolution, is not technically considered binding in its entirety on all states, scholars continue to debate the binding nature of specific provisions. As a General Assembly resolution, the Body of Principles is similarly not legally binding. However, in looking to the UDHR and the Body of Principles, the Working Group on Arbitrary Detention has decided to "rely heavily on 'soft' international legal principles to adjudicate individual cases." Jared M. Genser & Margaret Winterkorn-Meikle, *The Intersection of Politics and International Law: The United Nations Working Group on Arbitrary Detention in Theory and Practice*, 39 Colum. Hum. Rts. L. Rev. 101, 114 (2008).

charges,” in order to prevent the exposure of government malfeasance such as corruption.<sup>108</sup> Arrests of activists are then followed by politically-motivated prosecutions, show trials, and arbitrarily-long prison sentences.<sup>109</sup> Turgunov’s arrest, trial, conviction, and sentence are consistent with this reported government pattern.

The government arrested and convicted Mr. Turgunov on extortion charges as a pretext to suppressing what the International Federation for Human Rights and World Organisation Against Torture have acknowledged are “legitimate human rights activities.”<sup>110</sup> Human Rights Watch’s Uzbekistan researcher said: “Turgunov is yet another example of a human rights defender arrested on fabricated charges, ill-treated in custody, and subjected to a blatantly corrupt trial.”<sup>111</sup> His long history of political activism, including his recent investigation of police corruption in Manget, made Mr. Turgunov a target for the government, which also previously detained Mr. Turgunov from 1998 to 2000 under charges of “abuse of office” and “official negligence.”<sup>112</sup> Turgunov was freed under an amnesty offered two years later, but since then he and his family members were reportedly intimidated and harassed on many occasions.<sup>113</sup> Mr. Turgunov was also denied an exit visa to travel abroad.<sup>114</sup> As the United States government has suggested, Mr. Turgunov’s current detention is likewise politically-motivated.<sup>115</sup>

The facts in this case also support the argument that Mr. Turgunov was arrested for his activism, rather than any crime. Mr. Turgunov was accused and convicted of extorting 20 million Soums. At the time of his arrest, however, Mr. Turgunov was meeting with Mr. Hujoboyev (his alleged victim) in an attempt to obtain monies to satisfy a legal judgment on behalf of his client. That fact notwithstanding, the bag of money was not even found on Mr. Turgunov’s person at the time of his arrest.<sup>116</sup> Moreover, the bag of money brought by Mr. Hujoboyev was reportedly 500,000 Soums, and not the 20 million he is accused of extorting. Most importantly, the man from whom Mr. Turgunov allegedly extorted at the teahouse admitted under oath that no such extortion occurred, but this pivotal fact was barred from the trial, as was the principal witness’s live testimony. That the police were waiting outside the teahouse with surveillance equipment is very suspicious and points to the likelihood that the incident was an official attempt by police to frame Mr. Turgunov.<sup>117</sup> Similarly suspect, authorities who searched Mr. Turgunov’s home in Tashkent seized political materials only.<sup>118</sup> Furthermore, during Mr. Turgunov’s trial, which was

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<sup>108</sup> Human Rights Watch, *Human Rights Watch Concerns on Uzbekistan*, *supra* note 39; Amnesty International, *Uzbekistan: Submission to the Human Rights Committee*, *supra* note 38; U.S. State Dep’t. Country Reports on Human Rights, *supra* note 4.

<sup>109</sup> Human Rights Watch, *World Report 2009 – Uzbekistan*, *supra* note 32.

<sup>110</sup> International Federation for Human Rights, “Open Letter to the authorities: Appalling health conditions of arbitrarily detained Uzbek human rights defenders,” January 27, 2010, available at <http://www.fidh.org/Open-Letter-to-the-authorities-Appalling-health>.

<sup>111</sup> Human Rights Watch, *Uzbek Activist Sentenced to 10 Years*, *supra* note 44.

<sup>112</sup> Human Rights Watch, *List of Imprisoned Human Rights Defenders and Activists*, *supra* note 49.

<sup>113</sup> Radio Free Europe/ Radio Liberty, *supra* note 45.

<sup>114</sup> *Id.*

<sup>115</sup> UzNews, *US official says human rights in Uzbekistan important*, November 23, 2009, available at [http://www.uznews.net/news\\_single.php?lng=en&sub=&cid=9&nid=12153](http://www.uznews.net/news_single.php?lng=en&sub=&cid=9&nid=12153).

<sup>116</sup> UzNews, *Trial of Human Rights Activist Starts in Karakalpakstan*, *supra* note 62.

<sup>117</sup> Telephone Interview with Igor Vorontsov, Researcher on Human Rights, Human Rights Watch (March 26, 2009); Telephone Interview with Dilirom Is’havoka, leader of the Birdamilk opposition movement (February 22, 2009).

<sup>118</sup> IWPR, *supra* note 67.

closed to observers – despite the fact that trials in Uzbekistan are generally open to the public – the judge’s niece said: “[a]nyone can come in, all the press, bring everyone; Akzam will never be free, he will never get out of prison.”<sup>119</sup>

## 2. Mr. Turgunov is Arbitrarily Detained by Uzbekistan as a Result of His Exercise of Fundamental Rights and Freedoms

### a. Freedom of Association

The detention of Mr. Turgunov pursuant to Article 135 of the Uzbek Criminal Code is arbitrary because it results from Mr. Turgunov’s exercise of his rights under Article 22 of the ICCPR<sup>120</sup> and Article 20(1) of the UDHR, which guarantees freedom of association. Article 22 of the ICCPR provides that “[e]veryone shall have the right to freedom of association with others . . . .” Article 21(1) of the UDHR provides that “[e]veryone has the right to freedom of peaceful assembly and association.” Further, under Article 10 of the UDHR, individuals are entitled to such freedoms without discrimination. Finally, the Uzbek Constitution provides that “[a]ll citizens of the Republic of Uzbekistan shall have the right to form trade unions, political parties and any other public associations, and to participate in mass movements.”<sup>121</sup>

Despite the protections afforded by international and domestic law, the extortion charges brought against Mr. Turgunov were motivated, at least in some part, by his formation and leadership of *Mazlum*, a non-violent human rights organization. At the time of his arrest, Mr. Turgunov was working full-time as an advocate in Karakalpakstan, a semi-autonomous region in western Uzbekistan,<sup>122</sup> but he maintained his political affiliations in opposition to the Uzbek government and his membership in *Mazlam*.

There have been several reports that Uzbekistan’s police “arrested persons on false charges such as extortion or tax evasion as an intimidation tactic to prevent them or their family members from exposing corruption or interfering in local criminal activities.”<sup>123</sup> To this end, the Committee Against Torture has expressed concern about “information received about the intimidation, restrictions, and imprisonment of members of human rights monitoring organizations . . . .”<sup>124</sup> Mr. Turgunov is a well-known human rights activist, who had been working with Human Rights Watch and other local organizations. According to the Uzbek Human Rights Watch researcher, authorities took notice of Mr. Turgunov’s activism, and reacted negatively to his activities. When the European Union called attention to the human rights situation in Uzbekistan on December 17, 2008, it specifically cited the detention of Mr.

<sup>119</sup> Telephone Interview with Dilirom Is’havoka, leader of the Birdamilk opposition movement (February 22, 2009).

<sup>120</sup> Because Uzbekistan acceded to the ICCPR, it has consented to be bound by terms of that treaty. Vienna Convention on the Law of Treaties, Art. 2(1)(b), May 23, 1969, 1155 U.N.T.S. 331 (entered into force Jan. 27, 1980).

<sup>121</sup> The Constitution of the Republic of Uzbekistan, *supra* note 7, at Ch. 7, Art. 34.

<sup>122</sup> Despite its purported autonomy, the government in Tashkent maintains control over the region through the selective appointment of high ranking officials loyal to the Karimov regime. Gulnoza Saidazimova, *Uzbekistan: Shadowy Group Agitates for ‘Free Karakalpakstan,’* Radio Free Europe Radio Liberty (April 5, 2008), available at <http://www.rferl.org/content/article/1079744.html>.

<sup>123</sup> U.S. State Dep’t. Country Reports on Human Rights, *supra* note 4; *see also* Human Rights Watch, *Uzbek Activist Sentenced to 10 Years*, *supra* note 44.

<sup>124</sup> U.N. Comm. Against Torture, *supra* note 16, at ¶ 16.

Turgunov and called on the government to “cease all acts of harassment against human rights defenders.”<sup>125</sup>

Not only is the government’s arbitrary detention of Mr. Turgunov, because of his human rights activities, consistent with Uzbekistan’s practices generally, but it is also part of a pattern of harassment specifically aimed at Mr. Turgunov. In 1998, the government charged Mr. Turgunov with “abuse of office” and “official negligence” as a result of his work on a neighborhood committee promoting private alternatives to government provided services.<sup>126</sup> Even after his release under a presidential amnesty, Uzbekistan continued to harass his family and deny Mr. Turgunov the right to travel outside of the country. As in this case, Human Rights Watch called the abuse of office charges politically motivated.<sup>127</sup> Similarly, the extortion charges are to be fabricated as a means to persecute him for his human rights work as a founder and leader of *Mazlum*,<sup>128</sup> and consequently, his imprisonment resulting from those charges is arbitrary under international law.

#### b. Right to Participate in Government

The government’s detention of Mr. Turgunov is also arbitrary because it results from his attempt to exercise his right to participate in the political life of Uzbekistan. Article 25(a) of the ICCPR provides that “[e]very citizen shall have the right, without [discrimination] and without unreasonable restrictions: (a) [t]o take part in the conduct of public affairs, directly or through freely chosen representatives [and]; (b) [t]o vote and be elected at genuine periodic elections...” Article 21(1) of the UDHR provides that “[e]veryone has the right to take part in the government of his country, directly or through freely chosen representatives.” Further, the Uzbek Constitution provides that “[a]ll citizens of the Republic of Uzbekistan shall have the right to participate in the management and administration of public and state affairs, both directly and through representation...” and that “[a]ll citizens... shall have the right to form political parties...”<sup>129</sup>

Mr. Turgunov’s detention is arbitrary because it is motivated by his participation and leadership in the Erk opposition political party. Because this party is not affiliated with the government, the government excludes it from registration.<sup>130</sup> Moreover, police in Uzbekistan have a history of harassing and arbitrarily detaining members of opposition parties, including

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<sup>125</sup> Council of the European Union, *Declaration on Behalf of the European Union Concerning Individual Uzbek Cases*, *supra* note 91; *see also* U.S. State Dep’t., *Uzbek Activists Sentenced*, Press Statement, Sean McCormack (October 27, 2008) available at <http://www.state.gov/r/pa/prs/ps/2008/oct/111307.htm>. (“The United States urges the Government of Uzbekistan to release immediately [Akzam Turgunov and Salijon Abdurakhmonov] and other jailed human rights defenders, to allow human rights activists and independent journalists to function in Uzbekistan without fear of harassment or retribution, and so uphold Uzbekistan’s commitments on internationally accepted norms of human rights to which it has formally subscribed.”)

<sup>126</sup> Human Rights Watch, *Human Rights Watch Concerns on Uzbekistan*, *supra* note 39.

<sup>127</sup> Human Rights Watch, *List of Human Rights Defenders and Activists*, *supra* note 49.

<sup>128</sup> Human Rights Watch, *Uzbek Activist Sentenced to 10 Years*, *supra* note 44; International Federation for Human Rights, “Sentencing of Mr. Akzam Turgunov to ten years in prison,” October 24, 2008, available at <http://www.fidh.org/Sentencing-of-Mr-Akzam-Turgunov-to-ten-years-in>.

<sup>129</sup> The Constitution of the Republic of Uzbekistan, *supra* note 7, at Ch. 7 Arts. 32, 34.

<sup>130</sup> Freedom House, *Nations in Transit Country Report Uzbekistan (2008)*, *supra* note 3.

Erk, and Mr. Turgunov has been harassed previously.<sup>131</sup>

After his 2008 arrest in Karakalpakstan, authorities searched Mr. Turgunov's residence in Tashkent (which is over 600 kilometers from where he was living and working in Karakalpakstan) and removed only political items: a book written by the leader of Erk and a video about an assassination attempt against Mr. Salih. Such materials would have no relevance to extortion charges in Karakalpakstan and, indeed, neither item was introduced at Mr. Turgunov's trial.

3. The Non-Observance of the International Norms Relating to the Right to a Fair Trial in Akzam Turgunov's Case is of Such Gravity that His Detention is Rendered Arbitrary.

As set forth below, Mr. Turgunov was denied his internationally protected right to a fair trial and as a result his detention falls within category III. In summarizing the trial and process, Human Rights Watch described it as "blatantly corrupt," that "manifestly violated fair trial standards."<sup>132</sup> Similarly, the State Department has expressed "disappoint[ment] about the serious deficiencies of due process."<sup>133</sup>

a. Uzbekistan Denied Mr. Turgunov the Right to Communication With an Attorney and His Family

Uzbekistan's *incommunicado* detention of Mr. Turgunov for 18 days violated Article 14(3)(b) of the ICCPR and Principles 17 and 18 of the Body of Principles, as well as Uzbek law. The ICCPR provides that "[i]n the determination of any criminal charge against him . . . everyone shall be entitled to . . . have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing."<sup>134</sup> The Body of Principles further elaborates that "a detained or imprisoned person shall be entitled to communicate and consult with his legal counsel."<sup>135</sup> While the Body of Principles does not specifically identify when access to counsel must be granted, Principle 15 notes that, notwithstanding exceptions in the event of exceptional circumstances, "communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days." Finally, a recent decree by the Supreme Court of Uzbekistan establishes a right to counsel "from the moment of detention."<sup>136</sup>

After his arrest, Mr. Turgunov was held *incommunicado* for more than two weeks without access to a lawyer. It seems unlikely, and the government has apparently not alleged, that any exigent circumstances justified such a clear violation of Mr. Turgunov's rights under international and Uzbek law. Further, even if there were such a justification, the Body of Principles limits any such deprivation to a "matter of days" (not a matter of weeks). Such a deprivation contravenes both international and domestic law.

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<sup>131</sup> U.S. State Dep't. Country Reports on Human Rights, *supra* note 4.

<sup>132</sup> Human Rights Watch, *Uzbek Activist Sentenced to 10 Years*, *supra* note 44.

<sup>133</sup> U.S. State Dep't. Country Reports on Human Rights, *supra* note 4.

<sup>134</sup> ICCPR, *supra* note 104, at Art. 14(3)(a), (c).

<sup>135</sup> Body of Principles, *supra* note 86, at Principle 18(1).

<sup>136</sup> U.S. State Dep't. Country Reports on Human Rights, *supra* note 4.

The government also denied Mr. Turgunov access to his family from his arrest through the trial. The Body of Principles provides that “a detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family . . . .”<sup>137</sup> As noted, exceptions to this rule in the event of extenuating circumstances are limited to “a matter of days.” The refusal to allow Mr. Turgunov access to his family for the duration of the trial goes far beyond any exception the government might claim, and consequently violates the Body of Principles.

b. The Government of Uzbekistan Denied Mr. Turgunov an Independent Court and the Presumption of Innocence

Mr. Turgunov was tried before a biased court and was not granted the presumption of innocence as required under the ICCPR, UDHR, and the Body of Principles. The ICCPR requires that “[e]veryone charged with a criminal offense shall have the right to be presumed innocent until proved guilty according to law.”<sup>138</sup> The UDHR provides that “[e]veryone is entitled to full equality and to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charges against him.”<sup>139</sup>

The trial court in Mr. Turgunov’s case was not impartial and did not afford Mr. Turgunov the presumption of innocence as required by international law. As noted above, the Uzbek judiciary exercises little independence from the executive, and the vast majority of cases brought by prosecutors unsurprisingly result in convictions.<sup>140</sup> In Mr. Turgunov’s case, the bias of the court was confirmed by a court clerk who told individuals trying to enter the closed trial that Mr. Turgunov “will never be free, he will never get out of prison.” This statement, by an officer of the court, clearly indicates that the outcome of the case was preordained.<sup>141</sup> Therefore Uzbekistan denied Mr. Turgunov the right to an impartial tribunal and the right to the presumption of innocence, as protected by the ICCPR, UDHR, and Body of Principles.

c. Uzbekistan Denied Mr. Turgunov the Right to Examine the Witnesses Against Him

By denying Mr. Turgunov the right to examine witnesses against him during trial, the court violated Article 14(3) of the ICCPR, which provides that “[i]n the determination of criminal charges against [a defendant] everyone shall be entitled . . . (e) [t]o examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses of his behalf under the same conditions as witnesses against him.”

During the trial, the prosecution relied heavily on the written testimony of Aybek

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<sup>137</sup> Body of Principles, *supra* note 86, at Principle 15

<sup>138</sup> ICCPR *supra* note 104, at Art. 14(2). *See also* Body of Principles, *supra* note 86, at Principle 36 providing that detainees “suspected or charged with a criminal offense shall be presumed innocent and shall be treated as such until proved guilty according to law . . . .”

<sup>139</sup> UDHR, *supra* note 104, at Art. 10. *See also* ICCPR, *supra* note 104, at Art. 14(1), providing that “[e]veryone shall be entitled to a fair and public hearing by a competent, independent, and impartial tribunal established by law.”

<sup>140</sup> U.S. State Dep’t. Country Reports on Human Rights, *supra* note 4.

<sup>141</sup> The fact that the court clerk made this statement is particularly telling because, in addition to being an officer of the court, she was the niece of the judge.

Hujoboyev, the man whom Mr. Turgunov was accused of having extorted.<sup>142</sup> The testimony was obtained by the government prior to the trial during an interview at which neither Mr. Turgunov nor his attorney was present. Thus, Mr. Turgunov was not permitted to present questions or hear the statements made against Mr. Turgunov. When the testimony was presented during the trial, Mr. Hujoboyev was not made available for cross-examination. Further, testimony presented by the government alleged that Mr. Turgunov made a number of harassing phone calls to Mr. Hujoboyev prior to their meeting at the teahouse. This allegation could have been refuted through telephone records that would have shown that no such phone calls were made. However, the court denied Mr. Turgunov's request for an order to make the telephone records available to the defense. Because Mr. Turgunov was unable to cross-examine Mr. Hujoboyev, and was denied the ability to refute his allegations, he was denied the protections provided in Article 14(3) of the ICCPR.

**VI. INDICATE INTERNAL STEPS, INCLUDING DOMESTIC REMEDIES, TAKEN ESPECIALLY WITH THE LEGAL AND ADMINISTRATIVE AUTHORITIES, PARTICULARLY FOR THE PURPOSE OF ESTABLISHING THE DETENTION AND, AS APPROPRIATE, THEIR RESULTS OR THE REASONS WHY SUCH STEPS OR REMEDIES WERE INEFFECTIVE OR WHY THEY WERE NOT TAKEN**

Mr. Turgunov was convicted of extortion in a district court in Karakalpakstan. The trial lacked due process protections and thus violated his right to a fair trial, as set forth above. Following an appeal to the Supreme Court of Karakalpakstan on December 11, 2008, the conviction was upheld. The hearing lasted only 15 minutes and Mr. Turgunov's lawyer was not permitted to present before the court.<sup>143</sup> As he was preparing to submit a final appeal to the Supreme Court of Uzbekistan, Mr. Turgunov's lawyer Rustam Tulyaganov, had his license to practice law revoked as part of the government's re-licensing procedure.<sup>144</sup>

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<sup>142</sup> The prosecution appears to have relied almost exclusively on the Mr. Hujoboyev's testimony, and a video recording with mostly inaudible audio of the meeting at the café. However, people who attended the trial have indicated that the recordings simply corroborated Mr. Turgunov's description of the meeting, specifically that he received no sum of money. As such, the credibility of Mr. Hujoboyev's accusations was of central importance to the case.

<sup>143</sup> Ferghana.ru News Agency, *Uzbekistan: The Karakalpak Court Refused to Mitigate Agzam Turgunov's Punishment* (December 12, 2008), available at <http://enews.ferghana.ru/news.php?id=892&print=1>; U.S. State Dep't. Country Reports on Human Rights, *supra* note 4.

<sup>144</sup> *Human Rights Watch Concerns on Uzbekistan*, June 8, 2009, *supra* note 39.

**VII. FULL NAME AND ADDRESS OF THE PERSON(S) SUBMITTING THE INFORMATION (TELEPHONE AND FAX NUMBER, IF POSSIBLE)**

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